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Conference of the States Parties to the United Nations Convention against Corruption

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Draft report

Addendum

III. Review of implementation of the United Nations Convention against Corruption

A. Progress report

1. The secretariat provided an oral update on the progress made in the country reviews, highlighting that, at the time of reporting, responses to the self-assessment checklist had been provided by 158 States parties under review, 133 direct dialogues had taken place, and 97 executive summaries had been finalized. This showed that substantial progress was being achieved overall for the first cycle of reviews. However, challenges in communication had arisen with several States at various stages of either their own review or the reviews of other States. After sending reminders to this effect, the secretariat brought the matter to the attention of the Group and highlighted the readiness of the Office to provide technical assistance on the different steps of the review, if requested.

B. Outcome of reviews

2. In an opening statement, Mr. Kitti Wasinondh, Member of the National Legislative Assembly of Thailand and Chairman of the ad hoc committee on the Draft Organic Act on Countering Corruption, informed the group about the measures taken by his country to effectively implement the Convention, and in particular about the legislative amendments which were drafted by an ad-hoc committee chaired by him. These amendments included the criminalization of foreign bribery, modifications to the sanctions regime for Convention-related offences, the introduction of value-based confiscation in addition to property-based forfeiture, the amendment of the statute of limitations to suspend it in cases where the alleged offender has evaded the administration of justice, and the establishment

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of liability of legal persons for convention offences. Moreover, the powers and mandate of the National Anti-Corruption Commission are to be extended. A member of the National Anti-Corruption Commission also gave an account of the country's experience as a State party under review and made reference to Thailand's new national anti-corruption strategy.

3. The Minister for Institutional Transparency and Fight against Corruption of the Plurinational State of Bolivia, Ms Lenny Valdivia, underlined that her country had prioritized the fight against corruption. She pointed out areas where progress in implementation had recently been made, including the criminalization of foreign bribery, illicit enrichment, obstruction of justice, as well as the protection of witnesses and whistle-blowers. Moreover, the national asset declaration system had been strengthened with the introduction of a verification mechanism. While underlining the importance of the role of non-governmental organizations in the fight against corruption, she also voiced concern about the rankings produced by some of these organizations and highlighted the principles of the Implementation Review Mechanism as contained in the Terms of Reference of the Mechanism.

4. The secretariat drew the Group's attention to the study entitled "State of implementation of the United Nations Convention against Corruption: criminalization, law enforcement and international cooperation" (CAC/COSP/2013/CRP.7) which had been presented to the Conference at its fifth session. An update to this document was being prepared based on the completed reviews for presentation to the Conference at its sixth session. The secretariat also recalled the paper "Thematic overview of recommendations" (CAC/COSP/IRG/2014/10) and noted that the Group may wish to expand on its deliberations and consider how to ensure the consistency of the country reviews with a view to also assisting governmental experts in conducting the review, including drafting the country reports and formulating recommendations.

5. The secretariat presented an overview of the key thematic findings in the implementation of chapters III and IV of the Convention, analysing 68 completed country reviews. The oral update also responded to Resolution 5/2, "Strengthening the implementation of the criminalization provisions of the United Nations Convention against Corruption, in particular with regard to solicitation", which requested the Secretariat to provide a short update on the progress made and the challenges encountered in implementing the Resolution. The overall trends and findings had remained largely consistent with those identified in the thematic and regional implementation reports previously presented to the Conference and the Group.

6. Concerning the implementation of chapter III of the Convention, challenges continued to relate most often to the prosecution, adjudication and sanctioning of corruption-related offences (article 30 of the Convention), the freezing, seizure and confiscation of assets (article 31), specialized authorities (article 36) and the bribery of public officials (article 15). Challenges were also identified regarding illicit enrichment (article 20), the laundering of the proceeds of corruption (article 23), as well as the bribery of foreign public officials and officials of public international organizations (article 16) and the protection of reporting persons (article 33). With respect to good practices in implementation, these continued to relate to the establishment and strengthening of specialized authorities (article 36), the freezing, seizure and confiscation of assets (article 31), cooperation between national

authorities (article 38) and the prosecution, adjudication and sanctioning of corruption-related offences (article 30).

7. It was noted that the reviews had identified several key issues that reflected a certain diversity in interpretation of provisions of the Convention and consequently had led to disparate recommendations being issued. These differences were observed most notably in the areas of immunities for persons who self-report the commission of offences (sometimes termed "effective regret" or "spontaneous confession" provisions) and in the assessment of the effectiveness of sanctions for corruption offences. The matter of reporting on the practical application of the Convention was also highlighted, as a number of States parties encountered challenges in the collection, consolidation and accessibility of statistical data on implementation, which presented challenges in the practical assessment and evaluation of effectiveness in implementation. The secretariat noted that these issues could benefit from further analysis as the Conference and the Group consider the assessment of the follow-up measures taken by States to the reviews of the first cycle and the structuring of the next review cycle.

8. With regard to chapter IV of the Convention, the Secretariat reported on the most important trends arising from the completed reviews of the ongoing first cycle of the Review Mechanism with regard to chapter IV of the Convention. The presentation included an analysis of the most prevalent challenges and good practices and the cross-cutting findings of the reviews, such as the importance of statistical data collection and the time needed for granting international cooperation. Further, the presentation discussed topics in which divergent conclusions were made in the country reports, presenting ongoing discussions and developments in the interpretation of the Convention. Those related to requirements with regard to extraditable offences, dual criminality, process guarantees in extradition procedures, and the compliance with article 46, paras. 7, 9-29 of the Convention (direct application of the framework provided by the Convention to mutual legal assistance requests).

9. According to guidance provided by the Group, a panel discussion was organized to facilitate the Group's deliberations on the review of implementation.

10. A panellist from Israel underlined that the Review Mechanism had proved very useful to assess the implementation of the Convention in his country. Israel had taken steps to bring domestic law into compliance with the Convention even before ratification, which included the adoption of new and more specific criminalization provisions, for example, on foreign bribery, and the implementation of some of the optional provisions of the Convention, such as trading in influence. Concerning the lessons learned from the review of his country, he emphasized the value of making the review process as inclusive as possible, involving not only a great number of officials on all levels, but also civil society and the private sector. Another aspect of the review process that was identified favourably was the possibility to comment on the draft observations and recommendations. This greatly helped to align recommendations with the country's legal system and thus facilitate their subsequent implementation.

11. A panellist from the Philippines equally stressed the advantages of an inclusive review process, reporting that they had involved stakeholders from all three branches of Government as well as civil society in a national dialogue. After the

publication of the review report, a national conference was organized to review the recommendations identified in the review and to prioritize their implementation. As a result, in 2013, the President issued an Executive Order to provide for the effective implementation of the Convention and the establishment of a high level UNCAC Oversight Committee. This committee, under the leadership of the Office of the Ombudsman, also includes civil society organizations and the private sector and is tasked with monitoring the implementation of the recommendations made by the review.

12. A panellist from Ghana reported that his country had identified a number of legislative gaps immediately after acceding to the Convention. As a consequence, existing laws were amended and new laws were passed, including laws on public procurement, money laundering, conflict of interests and whistle-blower protection. He noted that, as a consequence of the country review process, the legislative framework and institutional would again be strengthened and brought further in line with the Convention. A new fund has been established to provide funding to independent institutions like the Commission on Human Rights and Administrative Justice which has responsibility for anti-corruption. Finally, the panellist highlighted that the anti-corruption action plan was being updated to implement the remaining recommendations from the review report.

13. In the ensuing discussion on chapter III, many States reported to the Group on their national implementation efforts and provided updates on domestic reform measures taken in preparation for or during the course of the reviews, including concrete follow-up actions taken to address recommendations made during the course of the review. Most frequently, the actions undertaken at the domestic level related to the development of national strategies against corruption in line with the Convention; legislative reforms, including in respect of transnational bribery, money laundering and illicit enrichment; strengthening investigative, prosecutorial and judicial capacity; enhancing inter-agency coordination; and establishing measures to protect witnesses, experts and reporting persons.

14. Several speakers highlighted measures their countries had adopted with a view to facilitating the seizure and confiscation of the proceeds of corruption, including the introduction of value based, extended, and non-conviction based confiscation, as well as the establishment of specialized agencies or units tasked with asset recovery and the management of seized and confiscated assets. Moreover, one speaker highlighted the possibility of using technology to achieve the equivalent effect of rapid lifting of bank secrecy. It was noted that in designing national reform measures, a number of States parties had been oriented by the good practices and lessons learned in other countries as identified through the country reviews, and had specifically consulted the publicly available country review reports and executive summaries. States also reported on enhanced enforcement action leading in many cases to the conviction of offenders in high-level corruption cases, as well as the successful recovery of significant amounts of proceeds of corruption.

15. In a number of countries, national action plans had been created to follow up on review recommendations and coordinate activities. Several speakers reported on the benefits of undergoing the review process, including with respect to the exchange of ideas and experience among States and to identify areas for policy reform as well as technical assistance needs. The important role of the Review

Mechanism in enhancing implementation and cooperation among States was emphasized by many speakers.

16. Many speakers reported that a key outcome of States participating in the review process was the opportunity to establish or enhance domestic coordination mechanisms, in particular as a tool for implementing the recommendations of the reviews. In a number of States parties, national steering committees or inter-governmental task teams had been created to coordinate the implementation of the Convention and the review process itself, and this coordination was described as indispensable for effectiveness of the process.

17. Several speakers highlighted the important role of broad consultations at the national level, including involving non-governmental stakeholders, in the context of the Review Mechanism, both at an early stage in preparation of the self-assessment as well as during the country visit, and in the process of the accompanying reforms. This engagement was considered especially important in raising broad public awareness of the Convention and the Review Mechanism.

18. One positive by-product of undergoing country reviews had been the establishment or strengthening of national systems on data collection and statistical reporting. Although several speakers highlighted challenges in this area and the need for additional work to identify appropriate indicators, echoing the introductory remarks by the secretariat, speakers also noted that statistics should not be the exclusive measure used to assess effectiveness in implementation of the Convention.

19. The need to ensure consistency in the observations and recommendations emanating from the reviews was noted as indispensable for ensuring effective implementation of the Convention. The secretariat's attempts to identify these areas and strengthen consistency among reviews were welcomed. Some speakers suggested that the recommendations issued in the reviews be compiled in a list with a view to issuing standardized recommendations for the provisions of the Convention provisions and allowing a fuller analysis of technical assistance needs, and in this context States were urged to consider publishing the full review reports. Some speakers highlighted the need for States to implement non-mandatory provisions of the Convention. Speakers also welcomed efforts to ensure synergies of the reviews with other international review mechanisms. Finally, several speakers thanked UNODC and other technical cooperation partners, as well as donors, for supporting States parties in implementing the Convention and participating in the reviews.

20. With regard to chapter IV, speakers emphasized measures taken for the implementation of relevant provisions of the Convention and presented recent national reforms and initiatives with regard to practical aspects of international cooperation under the Convention. Several speakers reported that international cooperation legislation had been updated or relevant legislative amendments had been initiated, based on the recommendations from country reviews. One speaker reported that a mutual legal assistance law with detailed procedural requirements had been created on the basis of the recommendations of the country report, and that the number of international cooperation cases had since increased.

21. Some speakers reported on the conclusion of new treaties on mutual legal assistance and the establishment of joint investigative teams. Another speaker

highlighted the strengthening of cooperation of the police, tax and financial intelligence authorities of his country with their counterparts. Further, measures to strengthen regional cooperation were reported.

22. One speaker reported on the successful completion of an extradition by another country of the same region. A number of speakers highlighted the importance of asset recovery. They welcomed successful asset recovery measures and highlighted the persisting challenges in the field, calling upon States parties to remove barriers to asset recovery and making reference to the upcoming second review cycle. Also in regard to the second cycle, some speakers reported on preventive measures that had been adopted or strengthened in their countries.

23. Focusing on the consistency of review recommendations, one speaker stated that the recommendation to conclude new treaties could be in some cases replaced by a recommendation to provide assistance without a treaty basis or to use the Convention as a legal basis. With regard to extraditable offences, another speaker highlighted that States should have some flexibility with regard to non-mandatory offences under the Convention.

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C. Drawing of lots

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